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Supreme Court, U. S.
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Supreme Court of the United States

October Term, 1947

No. 90

PEOPLE OF THE STATE OF ILLINOIS *ex rel.*
VASHTI McCOLLUM,

Appellant

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT
NO. 71, CHAMPAIGN COUNTY, ILLINOIS, *et als.*,

Appellees

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF COUNSEL FOR AMERICAN UNITARIAN ASSOCIATION AS AMICUS CURIAE

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SUBJECT INDEX.

	Page
Motion for Leave to File Brief as *Amicus Curiae*	1
Brief of Counsel for American Unitarian Association as *Amicus Curiae*	3
I. Preliminary Statement	3
II. Argument	5

Citation of Cases.

Everson v. Board of Education, 330 U. S. 1	5
Jones v. Commonwealth, 38 S. E. 2nd 444 (Va.)	6
Reynolds v. United States, 98 U. S. 145	5
Re Summers, 325 U. S. 561, 571	7
United States v. Butler, 297 U. S. 1, 69	6
United States v. Constantine, 296 U. S. 287, 296	6
West Virginia State Board of Education v. Barnette, 319 U. S. 624	6

Miscellaneous.

First Amendment	5
Fourteenth Amendment	5, 7

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The undersigned, as counsel for the American Unitarian Association, respectfully moves this Honorable Court for leave to file the accompanying brief in the above-entitled case as *amicus curiae*. The appellant, but not the appellee, has consented to the filing of the brief.

EDWARD C. PARK,
Counsel for
American Unitarian Association.

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BRIEF OF COUNSEL FOR AMERICAN UNITARIAN ASSOCIATION AS AMICUS CURIAE

I.

Preliminary Statement

The American Unitarian Association is a religious society incorporated in 1825 under the laws of Massachusetts and has its principal office at Boston in that state. Its principal members are Unitarian churches located throughout the United States and Canada, and it exists for religious purposes, more particularly to serve Unitarian congregations and to aid them in the observance and extension of their faith.

It has an interest in the above-entitled proceedings by reason of the nature of the questions involved, the absolute separation of church and state being one of the cardinal principles of Unitarianism. The state rests ultimately upon the use of force, but from the Unitarian point of view the essence of religion is that it rests upon completely voluntary acceptance of ethical and spiritual beliefs and obligations. From the point of view of the Unitarian faith the only proper function of the state in connection with the church is to guarantee complete freedom in the realm of religion to individuals and to churches, by the use of force if necessary. Beyond this strictly limited function, which is basic in the American system, any action by the state constitutes an abridgement of the rights of the church.

We understand the case, most briefly stated, to be as follows:

James Terry McCollum, who was ten years old at the time the case arose, was required by the laws of Illinois to attend public school in Champaign County, Illinois, where he lived.

The appellee school district permitted pupils in the grade which the boy attended to be released from their secular studies for one-half hour a week if they volunteered to attend classes in religious education during that period. The classes in religious education were conducted in the school buildings, but otherwise without expense to the state or county. James was offered the same choice as other pupils, but as a result of parental instructions, he did not elect to become a member of the class in religious education, and was required to continue his regular studies during the half hour each week that other pupils were released.

The suit was by the mother of James, as a taxpayer in Champaign County, for a writ of mandamus to prohibit

religious education in the public schools while regularly in session. The petitioner also alleged that she was required by law to cause her son to attend the school.

We believe that for many ten-year-old boys, and perhaps for James, a choice between pursuing regular studies in public school and attending classes in religious education may be regarded as one between two evils. In any event, he was in substance, offered a release from compulsory attendance at public school only upon condition that he elect to pursue a course in religious education. He was in effect told that he must take such a course *or else* continue his regular studies. We think he was thereby constrained by public authority to attend the class in religious education. Moreover, as the record discloses, that constraint, though not absolute, became under the circumstances severe in that by not volunteering he was isolated from other pupils and singled out as a non-conformist.

It is our view that the principle of the separation of church and state should be maintained, and that the action of the School District violated that principle.

II.

Argument

The First Amendment, as made applicable to the states by the Fourteenth, prohibits state aid for any religious purpose.

Everson v. Board of Education, 330 U. S. 1.
Reynolds v. United States, 98 U. S. 145.

To coerce or influence pupils in the public schools to attend classes in religious education is obviously to aid religion.

While a state has undoubtedly power to constrain a minor child to attend a public school, if his parents are unable or unwilling to provide for his education elsewhere, that power can only be used for a proper public purpose. Clearly, a state may not require attendance at classes in religious education under penalties to be inflicted upon the child or his parents.

West Virginia State Board of Education v. Barnette, 319 U. S. 624.

To require a child to attend public school only upon condition that he has not volunteered to attend such classes is, we submit, to constrain or coerce his attendance. Clearly he is constrained when he is required to come to public school, though his restraint be legal if its sole purpose is a proper one. When, however, its purpose is an unauthorized one, or is either an authorized or in the alternative an unauthorized one, it cannot be justified.

A state may punish a minor child for violation of law, but a judgment of a juvenile court cannot include as one of the conditions of probation the requirement of attending Sunday School and Church for one year.

Jones v. Commonwealth, 38 S. E. 2nd 444 (Va.).

A state may levy an income tax to obtain revenue. But an exemption from tax granted to church goers would clearly be invalid. Resort to the taxing power to effectuate an end which is not legitimate is obviously improper.

United States v. Butler, 297 U. S. 1, 69.
United States v. Constantine, 296 U. S. 287, 296.

A fortiori, such resort may not be had where the object is within a constitutional prohibition.

It would be no answer to a challenge to the validity of a law exempting church goers from taxes that church doors were open to any one.

One law for those who are members of a religious organization and another law for those who are not would obviously violate the Fourteenth Amendment.

Re Summers, 325 U. S. 561, 571.

The regulations of the School District here involved seem to us to present a case of one law for James Terry McCollum and another for those of his classmates who volunteer to attend classes in religious education. He must go to school, while they are released.

Respectfully submitted,

EDWARD C. PARK,
Counsel for
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as Amicus Curiae.

FRANK B. FREDERICK,
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